Supreme Court, U.S.
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In the

Supreme Court of the United States

THOMAS L. HILL, Administrator of the
ESTATE OF JOHN BARBER;
PALMETTO BORN AGAIN CHURCH
OF CHRIST (APOSTOLIC), INC.,
d/k/a PALMETTO DELIVERANCE CHURCH,
Petitioners,

v.

FREDDIE LEE DIXON, SR.; MABEL DIXON,
Respondents.

On Petition for Writ of Certiorari
to the Supreme Court of North Carolina

PETITION FOR WRIT OF CERTIORARI

William Lee Davis, III
Counsel of Record
101-107 North Court Square
PO Box 1363
Lumberton, NC 28359
(910) 738-7776
Counsel for Petitioners

GibsonMoore Appellate Services, LLC
421 East Franklin Street ♦ Suite 230 ♦ Richmond, VA 23219
804-249-7770 ♦ gibsonmoore@comcast.net

QUESTION PRESENTED FOR REVIEW

Where the plaintiffs in a civil action move for summary judgment against a corporate defendant and serve notice of the motion and of the hearing on the motion on a person who is neither the corporation's registered agent for service of process nor an authorized agent, director, officer, or manager of the corporation, does the resulting entry of a "default" summary judgment against the corporation violate the corporation's right, under the Due Process Clause of the Fourteenth Amendment, to notice of, and opportunity to be heard at, the hearing on the summary judgment motion?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The Petitioner, Palmetto Born Again Church of Christ (Apostolic), Inc., has no parent corporation.

The Petitioner, Palmetto Born Again Church of Christ (Apostolic), Inc., is a nonstock, not-for-profit corporation and, thus, there is no publicly held company that holds 10% or more of Petitioner's stock.

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OPINIONS AND ORDERS ENTERED IN THE CASE

The Opinion and Judgment of the North Carolina Court of Appeals is unofficially reported at *Dixon v. Hill*, ___ N.C. App. ___, 620 S.E.2d 715 (2005) (review denied Jan. 26, 2006) (No. 667P05). (A-20.) The Order of the North Carolina Supreme Court denying Petitioner's Petition for Discretionary Review has been officially and unofficially reported at *Dixon v. Hill*, 360 N.C. 289, 2006 WL 880191 (N.C. Jan. 26, 2006) (No. 667P05). (A-33.)

STATEMENT OF JURISDICTION

Petitioner seeks review of the Judgment of the North Carolina Court of Appeals entered on November 1, 2005. (A-1.) The North Carolina Supreme Court entered an Order denying Petitioner's Petition for Discretionary Review on January 26, 2006. (A-33 to A-34.) Jurisdiction to review by writ of certiorari the judgment of the North Carolina Court of Appeals is conferred on this Court by 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED IN THE CASE

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part "[n]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

This civil action seeking money damages for breach of contract, fraud/constructive fraud, negligent misrepresentation, conversion, unfair and deceptive trade practices, and restitution/unjust enrichment was instituted in North Carolina state court by the Plaintiffs, Respondents Freddie Lee Dixon Sr. and Mabel Dixon, filing their Complaint on April 1, 1999. (A-37.) Palmetto Born Again Church of Christ (Apostolic), Inc. (hereinafter "Palmetto, Inc."), and John Barber, were named as defendants. (A-37.) Palmetto, Inc., is a South Carolina corporation authorized to do business in North Carolina. (A-38.) Its Registered Office Address and Registered Mailing Address in North Carolina are the same: 113 West 5th Street, Lumberton, North Carolina 28358. (A-89.)

Summonses were issued for service of process on Defendant John Barber at 21 Pinecrest Drive, Fairmont, North Carolina 28340, and on corporate Defendant Palmetto, Inc., to be served by certified mail upon John Oxendine, Registered Agent, 113 West 5th Street, Lumberton, North Carolina 28353. (A-35.) Defendants filed their answer to the Complaint on June 4, 1999, denying the material allegations of the Dixons' claims. (A-54.)

On August 25, 1999, the Dixons served their first request for admissions by mail on N. Hector McGeachy, the Defendants' counsel, at Post Office Box 747, Fayetteville, North Carolina 28302. (A-59.) On September 22, 1999, Defendants John Barber and

Palmetto, Inc., timely served their responses to the Plaintiffs' first request for admissions. (A-59.)

On April 23, 2001, an Order was entered allowing N. Hector McGeachy, attorney for Defendants, to withdraw. (A-22.) On May 22, 2001, Plaintiffs served their second request for admissions by certified mail, addressed to "Bishop Thomas L. Hill, Palmetto Born Again Church of Christ (Apostolic), Inc., P.O. Box 1652, Lumberton, NC 28359." (A-83.) Bishop Thomas L. Hill had not been appointed Registered Agent; rather, Palmetto, Inc.'s Registered Agent for service of process or papers was, at all times relevant to the instant case, John Oxendine. (A-101.) Neither was it ever alleged or demonstrated that Bishop Hill was an authorized agent, director, manager, or officer of the corporate Defendant Palmetto, Inc.

No subsequent proceeding was ever instituted by Plaintiffs with respect to their second request for admissions. On July 30, 2001, an Order was entered allowing Plaintiffs' original counsel, Bradley A. Coxe, to withdraw as attorney for both Plaintiffs. (A-24.)

The case then remained dormant for approximately a year and one-half, until January 21, 2003, when R. Clark Speaks entered a general appearance as attorney for Plaintiff Freddie Lee Dixon Sr. (A-65.) Notice of the appearance was served by mail, addressed to Charlie Floyd, Esquire, Post Office Box 129, Fairmont, North Carolina 28340, and to Bishop T.L. Hill, Palmetto Born Again Church of Christ (Apostolic), Inc., Post Office Box 1652, Lumberton, North Carolina 28359. (A-67.) At this time no attorney

had entered a general appearance on behalf of Palmetto, Inc. No service of Speaks's notice of appearance was made on any authorized agent, director, officer, or manager of Palmetto, Inc.

In the meantime, Defendant John Barber had died on January 12, 2000. (A-32.) On February 7, 2003, Thomas L. Hill was appointed as administrator of Barber's estate. (A-32.)

On June 24, 2003, Scott T. Slusser entered a general appearance as the attorney for Plaintiff Mabel Dixon. (A-68 to A-70.) Slusser served his notice of appearance by mail addressed to Charles E. Floyd, as "Attorney for the Estate of John Barber," at Post Office Box 129, Fairmont, North Carolina 28340, and to "Palmetto Born Again Church of Christ (Apostolic) Inc., c/o Mr. Thomas L. Hill, 21 Pinecrest Drive, Fairmont, N.C. 28340." (A-70.) Again, Speaks's notice of appearance was not served on any authorized agent, officer, director, or manager of Palmetto, Inc.

On August 11, 2003, over four years after they filed their Complaint, the Dixons filed a joint motion for summary judgment against Thomas L. Hill, Administrator of the Estate of John Barber, and Palmetto Born Again Church of Christ (Apostolic) Inc., a/k/a Palmetto Deliverance Church. (A-71.) The Dixons' motion for summary judgment was served by mail, addressed to Palmetto Born Again Church of Christ (Apostolic), Inc., c/o Mr. Thomas L. Hill, 21 Pinecrest Drive, Fairmont, North Carolina 28340, and to Charles E. Floyd, as "Attorney for the Estate of John Barber," Post Office Box 129, Fairmont, North Carolina

28340. (A-77.) There was no allegation or proof that Thomas L. Hill was an authorized agent, officer, manager, or employee of the corporate Defendant Palmetto, Inc., for service of process or papers. Indeed, Respondents admitted in their brief to the North Carolina Court of Appeals that "Plaintiffs did not provide any documentation of Mr. Hill's authority as a representative of the church." (A-117.)

On the same day they filed their joint motion for summary judgment, the Dixons also filed a joint motion to substitute Thomas L. Hill, as the Administrator for the Estate of John Barber, for Defendant John Barber and to substitute the *name* of "Palmetto Born Again Church of Christ (Apostolic), Inc., a.k.a. Palmetto Deliverance Church," for "Palmetto Born Again Church of Christ (Apostolic), Inc." (A-91 to A-92.) This motion was served by mail addressed to "Palmetto Born Again Church of Christ (Apostolic) Inc., c/o Thomas L. Hill, 21 Pinecrest Drive, Fairmont, N.C. 28340" (A-94), without any allegation or proof that Thomas L. Hill was an authorized agent, officer, manager, or director of Palmetto, Inc., for service of process or other papers. There was also no service of process of the motion for substitution of parties on Palmetto Deliverance Church, an unincorporated association, or on any person designated to receive service of process, or shown to be authorized to receive service, on behalf of Palmetto Deliverance Church.

The motion to substitute was also served on Charles Floyd, as "Attorney for the Estate of John Barber," even though he had never entered an appearance in this matter as the attorney for the Estate